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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91209816
Party	Defendant Berman, Solomon
Correspondence Address	BRENDAN M. SHORTELL LAMBERT & ASSOCIATES 92 STATE ST STE 200 BOSTON, MA 02109-2004 UNITED STATES shortell@lambertpatentlaw.com
Submission	Motion to Strike
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Date	11/07/2013
Attachments	Motion to Strike.pdf(97950 bytes)

**THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Quantum Test Prep,)	
)	Opposition No. 91209816
)	Serial No. 85804808
Petitioner,)	Mark: QUANTUM PREP
v.)	
)	
Mr. Solomon Berman,)	
Respondent.)	
)	

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

**MR. SOLOMON BERMAN’S MOTION TO STRIKE QUANTUM TEST
PREP’S RESPONSE TO MR. BERMAN’S
MOTION TO COMPEL**

NOW COMES Mr. Solomon Berman (“Mr. Berman”) and hereby moves to strike Petitioner’s, Quantum Test Prep (“QTP”), Response to Mr. Berman’s Motion to Compel, Docket #13, for the reasons set forth below:

1. Mr. Berman filed his Motion to Compel Discovery, Docket #9, on September 4, 2013.
2. 37 CFR §2.127 governs motion practice before the TTAB for *inter parties* cases. 37 CFR §2.127 specifically states that:

A brief in response to a motion shall be filed **within fifteen days** from the date of service of the motion unless another time is specified by the Trademark Trial and Appeal Board, or the time is extended by stipulation of the parties approved by the Board, or upon motion granted by the Board, or upon order of the Board.

3. The 15 day time period for QTP to file a reply elapsed on September 19, 2013.
4. Counsel for QTP did not file their reply to Mr. Berman's Motion to Compel until October 31, 2013. QTP waited a full 57 days after Mr. Berman's Motion was filed to file their Reply. QTP's reply is 42 days late in accordance with the rules of this Court.
5. 37 CFR §2.127 makes it very clear to all parties that:

The Board may, in its discretion, consider a reply brief. Except as provided in paragraph (e)(1) of this section, a reply brief, if filed, shall be filed within fifteen days from the date of service of the brief in response to the motion. **The time for filing a reply brief will not be extended. No further papers in support of or in opposition to a motion will be considered by the Board.**

6. Therefore, QTP's reply shall not be considered and it should be stricken from the record.
7. QTP was given ample time to address Mr. Berman's issues with QTP's inadequate discovery responses and QTP neglected to do so, it would be an injustice to allow them to attempt to do so after such a lengthy time after their reply was due.
8. While QTP has provided discovery documents they have not addressed the inadequate interrogatories responses so this issue is not moot and this motion to strike is both timely and relevant.

WHEREFORE, Mr. Berman requests that:

- A. QTP's Reply to Mr. Berman's Motion to Compel, Docket #13, be stricken from the record;
- B. The Court rule on Mr. Berman's Motion to Compel as it became ripe on September 19, 2013; and,
- C. Grant such other and further relief as it may find appropriate.

Dated: November 7, 2013

Respectfully submitted,

Solomon Berman
By its Attorneys,
Lambert & Associates

/s/ Brendan M. Shortell
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CERTIFICATE OF ELECTRONIC FILING

I HEREBY CERTIFY that this MOTION TO STRIKE was filed electronically with the Trademark Trial and Appeal Board on November 7, 2013.

/s/ Brendan M. Shortell
Brendan M. Shortell

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this MOTION TO STRIKE was sent via email and first class mail on this day of November 7, 2013 to the Applicant's counsel of record at the following address:

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/s/ Brendan M. Shortell
Brendan M. Shortell